

# The UAE Courts Approach With Respect To Upholding Arbitration Awards

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The contract between the parties contained an arbitration clause. Accordingly, the Claimant requested the court to appoint an arbitrator. The dispute between the parties related to the Defendant's unilateral termination of usufruct contracts between the parties. The Claimant, which considered the Defendant's termination to be unlawful, also desired that the arbitrator assesses the quantum of damages suffered by it by virtue of the purported unlawful termination.

## Facts of the Case

The Claimant was the owner of a Hotel, and had entered into four usufruct contracts with the Defendant with respect to that Hotel. The Claimant argued that it had fulfilled all its contractual obligations, but that the Defendant had taken possession over three out of the four outlets and closed them down. It was the Claimant's case that this was done without any legal basis or justification. Accordingly, on 7 September 2007 the Claimant sent the Defendant a letter of termination of the contracts and requesting the hand over of the outlets.

## Procedural History

On 24 October 2007, the Court of First Instance referred the case to the Judicial Department of the Emirate of Abu Dhabi to appoint a sole arbitrator to arbitrate the dispute between the parties, based on the request of the Defendant.

## The Court also held:

- That the arbitrator should deposit the Award and the appendices with the Court within 15 days from the date of issuance.
- That within 15 days of the arbitrator depositing the Award, a hearing session to authenticate this award would be set.

The Defendant appealed this decision to the Court of Appeals and the Court of Cassation but both appeals were dismissed. On 28 January 2009 the arbitrator issued the award, and on 8 April 2009 the Court of First Instance authenticated the award. The Defendant then lodged an appeal with the Court of Appeal.

The Court of Appeal upheld the lower's court decision. Consequently, the Defendant appealed to the Court of Cassation.

## Court of Cassation

The Defendant argued that the Court of Appeal had erred in its decision to uphold the decision of the Court of First Instance. The basis for the Defendant's appeal was that the Award was null and void. The grounds for this argument were as follows:

- a) The authentication of the arbitral award should not be filed after the issuance of the final decision on 24 October 2007 that ended the dispute by appointing an arbitrator as it is not admissible to accept the interlocutory application that was submitted by the Claimant requesting the court to authenticate the arbitral award after the Court issued its final decision;

b) The procedure for authenticating the Award as imposed by the Court had not been requested by the parties.

c) That the Claimant should have had to initiate its own independent proceedings to demand that the Court authenticate the arbitral award.

d) That the Court lacked the jurisdiction to oversee the case as the Tenancy Dispute Resolution Committee (TDRC), as per law No 20 of 2006 (as amended by Law no. 6 of 2009 for the Emirates of Abu Dhabi) was the appropriate legal entity for the resolution of the dispute. The Defendant argued that this was the case notwithstanding the presence of an arbitration clause.

e) Finally, the Defendant argued that the arbitration award was void due to the invalidity of the arbitration clause in the contracts as the Claimant's representatives were not authorized in their Power of Attorney to sign the arbitration clause on behalf of the Claimant.

In relation to the first point, the Court of Cassation relied on Article 213 of the UAE Civil Procedure Law in holding that arbitration can be conducted either through the Court (Articles 213(1) and 213(2)) or through an independent institution (Article 213(3)).

The Court of Cassation stated that if parties participating in an institutional arbitration wanted to enforce or set aside the arbitral award, they should file a claim in the relevant Court according to article 42 of the Civil Procedure Law. However, the Court of Cassation held that the arbitration proceedings in this case had been conducted through the Court. The Claimant's plea to set aside the Award was therefore rejected because of Article 213(1) of the UAE Civil Procedure Law, which permits a party to enforce the award without the need to file a new case with the court.

The Court rejected the Claimant's plea that the procedure for authenticating the Award as imposed by the Court had not been requested by the parties. In this regard, the Court relied on subsections 1 & 2 of article 213, and accordingly the court decided that the parties can authenticate the arbitral award as stated in subsections 1 of this article without the need to file a new case with the court.

The Court of Cassation held that the TDRC was the legal entity that is entitled to oversee disputes emanating from the tenant-landlord relationship. Moreover, the Court held that the mandatory provisions of Article 2 Law no.20 of 2006 as amended by Law no. 6 of 2009 for the Emirates of Abu Dhabi prohibit parties "to agree to arbitrate any dispute arising out of the tenancy agreement".

However, the Court noted that Article 2 of the same law excluded from its provision leases for hotels and building for tourism purposes, including furnished apartments. The Court found that the effect of Article 2 was such that the TDRC did not have jurisdiction over cases related to leases for hotels and building for tourism purposes, including furnished apartments. The Court reasoned that since contracts falling under Article 2 were not covered by TDRC, parties to these types of contracts should be granted a limited time within which to agree to arbitrate their tenant landlord disputes. In this case, the Court ruled that as the subject property was a hotel for tourism purposes the TDRC did not have jurisdiction.

The Court of Cassation also rejected the Claimant's capacity argument. The Court held that pursuant to Article 203(4), only those who have capacity/competence to participate in dispute resolution proceedings can agree on arbitration. The Court clarified that this authority could be expressed or implied.

Such authority would be considered express when it is conveyed verbally or in writing, and implicit when inferred from the circumstance, such as speech and conduct. The Court further held that the agreement to arbitrate can be incorporated as a clause in the contract between parties or as a separate independent agreement in the course of a dispute between both parties. However, this is not to be confused with the doctrine of separability which prescribes that an arbitration clause in a contract is to be treated as separate from that main contract. The Court found that in this case, all contracts concluded between the parties were signed by the representatives of the Claimant and sealed with its company stamp. The Court

also found although the representatives who signed the agreements containing the arbitration clause did not have express authority to do so, there was communication regarding arbitration between these representatives and the duly authorized persons within the company. These communications, according to the Court, were strong evidence of an implied authority to enter into arbitration. Additionally, the Defendant did not dispute the authority of these representatives at any earlier stage.

The result of the case was that the Court of Cassation rejected the Claimant's pleas. The award was held to be valid and enforceable.